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MCDERMOTT, WILL & EMERY

October 18, 2000

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Ms. Magalie R. Salas
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W., #TW-A325
Washington, D.C. 20554

Re: *Ex Parte* Presentation; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz; WT Docket No. 99-87

Dear Ms. Salas:

Pursuant to Section 1.1206(b) of the Commission's rules, this to inform you that today Christine Gill and John Delmore of McDermott, Will & Emery, counsel for Southern Communications Services, Inc., met with Peter A. Tenhula, Legal Adviser to Commissioner Michael Powell, to discuss the above-referenced proceeding. Ms. Gill and Mr. Delmore discussed the points set forth in the enclosed executive summary and memorandum.

An original and one copy of this letter are provided for inclusion in the record in this proceeding.

Very truly yours,

Christine Gill

Christine M. Gill

Enclosure

cc: Peter Tenhula

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EXECUTIVE SUMMARY

Southern Communications Services's Position

The FCC should not prohibit the transfer or assignment of 800 MHz SMR spectrum lawfully converted to commercial use from Business and Industrial/Land Transportation ("Business and I/LT"). Over 95% of its 800 MHz SMR channels have been converted from Business and I/LT channels, and a prohibition would make virtually impossible common and often necessary financing mechanisms such as initial public offerings, equity-based investments, mergers, or sale of the company.

Reasons For Not Prohibiting Transfer Of Converted 800 MHz SMR Licenses

1. **Regulatory Parity.** Prohibiting the transfer of converted 800 MHz SMR licenses would disrupt the current symmetry between SMR and other CMRS licensees with regard to transfers, which was established under Congressional mandate and after extensive rulemaking only five years ago. No good reason has arisen to upset it.

2. **Participation In Auctions and Secondary Spectrum Markets.** The FCC promotes the importance of both relocating incumbents on spectrum won at auction and participating in secondary spectrum markets. However, if 800 MHz SMR licensees with converted channels are prohibited from transferring their licenses, they will be unable to undertake those activities.

3. **Renewal Expectancy Benefits.** The license renewal expectancy for which all CMRS licensees can seek to qualify were designed to benefit licensees and the public by, for example, facilitating investment, creating stability, and allowing proven companies to retain their authorizations. Prohibiting 800 MHz SMR licensees with converted channels from transferring their licenses would go against established FCC policy by substantially negating those benefits

4. **Lack of Proper Notice.** The FCC did not provide sufficient notice in accordance with the Administrative Procedure Act of the possibility that it would use this rulemaking to change the transfer rights associated with converted 800 MHz SMR licenses. As such, it deprived interested parties of an opportunity to meaningfully participate in this aspect of the rulemaking.

5. **No Benefit To The Public Interest.** There is no particular benefit to the public interest by prohibiting the transfer of converted 800 MHz SMR licenses. Certainly, no spectrum would necessarily be returned to the Business and I/LT pool. Rather, it would just be frozen in place with its current licensees who would be restricted from normal business practices (such as obtaining new financing) by this restriction on their licenses, which would be contrary to the Commission's spectrum management principles.

SOUTHERN COMMUNICATIONS SERVICES, INC.

WT Docket No. 99-87

Preservation Of The Right To Transfer And Assign 800 MHz SMR Licenses Converted From Business And I/LT Channels

October 17, 2000

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EXECUTIVE SUMMARY

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PRESERVATION OF THE RIGHT TO TRANSFER AND ASSIGN 800 MHz SMR LICENSES CONVERTED FROM BUSINESS AND I/LT CHANNELS

I. INTRODUCTION

A. Procedural Background

On March 25, 1999, the Federal Communications Commission released a Notice of Proposed Rulemaking initiating *Implementation of Sections 309(j) and 337 of the Communications Act of 1934, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, and Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz* ("Balanced Budget Act Rulemaking").[1] The proceeding became known as the *Balanced Budget Act Rulemaking* because its overall concern is the implementation of amendments under the Balanced Budget Act of 1997 ("Balanced Budget Act") to Sections 309(j) and 337 of the Communications Act of 1934. The Balanced Budget Act revised the FCC's wireless auction authority, and commensurately the NPRM seeks comment on which wireless services should be exempt from auctions, how to implement competitive bidding for non-exempt services, and the extent to which certain licensing rules should be changed.

The *NPRM* was followed by a *Public Notice* issued July 21, 1999, in which the FCC discussed a waiver request filed by Nextel Communications.[2] Nextel had filed 50 waiver requests seeking consent to assignment from various entities of Private Mobile Radio Service Business licenses, which it planned to use in its CMRS operations.[3] The FCC did not rule on the request but, rather, incorporated it into the *Balanced Budget Act Rulemaking* and sought comment accordingly.[4] Specifically, the FCC stated, "Parties should limit their comments to the issue of licensing PMRS spectrum in the 800 MHz band for commercial SMR use."[5]

Neither the *NPRM* nor the *Public Notice* mention changing the transfer and assignment rights of licensees holding 800 MHz SMR spectrum lawfully converted to commercial use from Business Radio Service and Industrial/Land Transportation Service ("Business and I/LT").[6] However, Southern Communications Services was recently informed that the FCC may, in fact, use this rulemaking to institute a prohibition on

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1 *Notice of Proposed Rulemaking*, WT Docket No. 99-87, 14 F.C.C.R. 5206, FCC 99-52 (Mar. 25, 1999) ("*NPRM*").

2 *Wireless Telecommunications Bureau Incorporates Nextel Communications, Inc. Waiver Record Into WT Docket No. 99-87*, DA 99-1431 (July 21, 1999).

3 *Id.*

4 *Id.*

5 *Id.*

6 Unless otherwise indicated, in the remainder of this paper the term "transfer" shall refer to transfers and assignments.

transferring such spectrum. Southern had no opportunity to submit comments on the matter.

B. Southern Communications Services' Position

Southern urges the FCC not to prohibit the transfer of 800 MHz SMR spectrum lawfully converted to commercial use from Business and I/LT. It is highly concerned with the effects of such a prohibition because over 95% of its 800 MHz SMR channels have been converted from Business and I/LT channels. Its transfers, like those of all licensees, are currently governed by 47 U.S.C. § 310(d), which provides that transfers shall be granted "upon finding by the Commission that the public interest, convenience, and necessity will be served thereby."[7] However, a prohibition would obviate § 310(d) and hence effectively prohibit Southern from doing anything that requires a license transfer, whether in whole or a "transfer of control."

The significance of a prohibition on transfers cannot be overstated. In today's rapidly changing and competitive wireless market, growth and flexibility are key factors to survival. A prohibition on transfers could significantly detract from a carrier's ability to remain competitive with carriers not so constrained. For example, important investment activities designed to grow the company, such as initial public offerings, mergers, or investments in which the lender takes an equity stake in the company would be off-limits because bringing in new shareholders would effectuate a transfer of control. Mergers and acquisitions are also commonly undertaken by wireless providers, and in many instances arguably necessary for survival, but they are impossible if transfers are prohibited. The same can be said for utilizing secondary spectrum markets to sell or swap licenses that are no longer economically viable or otherwise needed. Additionally, of course, sale of the company would be impossible.

C. Retroactive Change is Unfair

Southern is concerned about protecting an existing right, namely, the right licensees normally have to transfer and assign their licenses in accordance with existing statutes and regulations and to realize reasonable investment backed expectations. This is fundamentally different from requests to *prospectively* change rules. As noted by the Supreme Court, "Retroactivity is generally disfavored in the law in accordance with 'fundamental notions of justice' that have been recognized throughout history."[8]

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[7] Additionally, 47 C.F.R. § 1.948 sets forth several transfer provisions for wireless licensees generally and 47 C.F.R. § 1.2111 sets forth reporting and other requirements for transferring licenses obtained through competitive bidding.

[8] *Eastern Enterprises v. Apfel*, 524 U.S. 498, 118 S. Ct. 2131, 141 L. Ed.2d 451, 477 (1998) (quoting *Kaiser Aluminum and Chemical Corp. v. Bonjorno*, 494 U.S. 827, 110 S. Ct. 1570, 108 L. Ed.2d 842, 866 (1990)).

II. DISCUSSION

Southern has been an active participant in the Balanced Budget Act Rulemaking and does not believe there is any justification for prohibiting the transfer of 800 MHz SMR licenses converted from Business and I/LT channels. On the other hand, as explained below, there are numerous reasons for *not* prohibiting such transfers.

A. Sustaining Regulatory Parity

Summary: The Commission's Rules currently provide for regulatory parity between SMR and other CMRS licensees with regard to transfers. Prohibiting 800 MHz SMR licensees with converted channels from transferring them would disrupt this symmetry, which was established under Congressional mandate and after extensive rulemaking.

Regulatory parity between SMR and other CMRS licensees began with the Omnibus Budget Reconciliation Act of 1993 ("1993 Budget Act"), which mandated that the FCC establish a uniform regulatory regime for all commercial mobile services. [9] As noted in the House Report, Congress specifically intended to establish "uniform rules to govern the offering of all commercial mobile service."[10] The FCC implemented the 1993 Budget Act amendments through a series of rulemakings.

In the rulemaking pertinent to achieving transfer and assignment parity for 800 MHz SMR licensees, Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services (CMRS Rulemaking), the Commission issued a Second Report and Order on March 7, 1994.[11] There, the Commission classified SMR licensees as CMRS providers, explaining, "This is consistent with Congress's goal and the views of most commenters that SMRs providing interconnected service on a competitive basis with cellular carriers should be regulated similarly to cellular carriers."[12] The FCC subsequently issued a Third Report and Order in which it specifically discussed the need to conform the SMR license transfer rules with those for other types of CMRS licensees. [13] In enacting uniform transfer requirements, the Commission stated:

> We have stated throughout this proceeding that regulatory symmetry requires the elimination of inconsistent regulatory requirements applicable to CMRS services whenever practical. In order for this objective to be met,

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9 Pub. L. No. 103-66, 107 Stat.312 (1993).

10 H.R. Rep. No. 103-111 at 259, *reprinted in* 1993 U.S.C.C.A.N. at 586.

11 *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services*, GN No. 93-252, *Second Report and Order*, 9 F.C.C.R. 1411, FCC 94-31 (Mar. 7, 1994) *("CMRS Second Report and Order")*.

12 *Id.* at 1451, ¶ 91.

13 *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services*, GN No. 93-252, *Third Report and Order*, 9 F.C.C.R. 7988, 8158-8162, ¶¶ 388-398, FCC 94-212 (Sept. 23, 1994) *("CMRS Third Report and Order")*.

> it is essential that we adopt uniform standards and procedures governing the transfer of CMRS authorizations. *Moreover, these standards and procedures must be equally applicable to Part 90 and Part 22 CMRS licensees alike.* As we have noted, the record supports our tentative conclusions. *We are, therefore, adopting the following transfer requirements, which mirror the current Part 22 provisions.*[14] (Emphasis added.)

As shown by the foregoing, Congressional mandate set into motion FCC actions which brought SMR and other CMRS licensees under the same general standards with regard to transfers, as well as many other matters. The FCC established the current regime of regulatory parity through an extensive and carefully considered rulemaking. Its action reflected industry sentiment, as indicated by the observation in the *Third Report and Order* that, "Nearly all of the commenters addressing this issue agree that the transfer policies adopted in Part 22 should be extended to all CMRS services."[15] Nothing has occurred since that time that indicates 800 MHz licensees with converted channels are now unworthy of the transfer benefits accorded other CMRS licensees. Therefore, the FCC should not now undo its actions, and act contrary to Congressional mandate, by prohibiting the transfer of 800 MHz SMR licenses converted from Business and I/LT channels.

Southern would additionally note that a prior attempt to impose a non-symmetrical requirement on converted 800 MHz SMR licenses was unsuccessful. In Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, which also concerned the implementation of the Balanced Budget Act, the FCC issued an order in December 1995 refusing to give incumbent 800 MHz SMR licensees the same beneficial construction deadlines it gave other CMRS licensees.16 On appeal, the D.C. Circuit found no reason in the record to sustain that denial and, thus, remanded the matter to the FCC.17 On remand, the FCC brought most SMR licensees into the beneficial deadline fold but continued to deny it to incumbent 800 MHz SMR licensees with converted channels.18 Consequently, another appeal was filed and the FCC instituted a further rulemaking in which, on August 2, 2000, it concluded that 800 MHz SMR licensees with converted channels should be treated the same as other SMR licensees.

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14 *Id.* at 8160, ¶ 392.

15 *Id.* at 8158, ¶ 389.

16 *In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, *First Report and Order, Eighth Report and Order, and Second Notice of Proposed Rulemaking*, 11 F.C.C.R. 1463, FCC 95-501 (Dec. 15, 1995).

17 *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965 (D.C. Cir. 1999).

18 *In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, *Memorandum Opinion and Order on Remand*, 14 F.C.C.R. 21679, 21689, ¶ 20, FCC 99-399 (Dec. 23, 1999).

The Commission's rationale for finally granting complete symmetry in the construction deadline litigation applies with equal force with regard to transfers. There is no reason to impose different and disadvantageous rules on certain CMRS entities *merely* because they operate on converted Business and I/LT channels.

B. Preserving The Ability To Participate In Auctions And Secondary Spectrum Markets

Summary: The FCC promotes the importance of both relocating incumbents on spectrum won at auction and participating in secondary spectrum markets. However, if 800 MHz SMR licensees with converted channels are prohibited from transferring their licenses, they will be unable to undertake those activities. Such a prohibition would needlessly fly in the face of the FCC's stated positions.

The ability to successfully participate in spectrum auctions has become highly important to all wireless licensees seeking to grow their systems. For many companies, an essential component of such participation is the ability to relocate incumbents on channels they win, which, of course, is dependent on their ability to transfer their licenses. The FCC recognized this in *Nextel Communications, Inc. Requests for Waiver of 47 C.F.R. §§ 90.617(c) and 90.619(b)*[19], in which Nextel asked the FCC to allow various Private Land Mobile Radio Service Business licensees to assign their licenses to it. The FCC granted the request to the extent that Nextel would use the licenses to relocate incumbents, stating that doing so furthered its goals in the 800 MHz SMR proceeding[20] "by promoting an efficient and effective transition to geographic area licensing."[21] The Commission also observed that the assignment "facilitates efficient use of spectrum and compliance with relocation rules" and thus serves the public interest.[22]

Given the importance the Commission clearly places on the ability to relocate incumbents on spectrum won at auction, it should not take affirmative measures that would restrict a licensee's ability to achieve such relocation. Indeed, the Commission *waived its rules* to enable Nextel to relocate incumbents. However, prohibiting licensees with converted 800 MHz SMR channels from transferring them will make it extremely difficult for a company like Southern to use its existing channels to relocate incumbents from channels it won at auction.

Additionally, the FCC has not hesitated to extol the virtues of and need for secondary spectrum markets. For example, in a speech to the Cellular

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19 *In the Matter of Nextel Communications, Inc. Requests for Waiver of 47 C.F.R. §§ 90.617(c) and 90.619(b)*, DA 98-2206, *Order*, 14 F.C.C.R. 11678, DA 99-1404 (July 21, 1999).

20 *In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144.

21 *In the Matter of Nextel Communications, Inc. Requests for Waiver of 47 C.F.R. §§ 90.617(c) and 90.619(b)*, DA 98-2206, *Order*, 14 F.C.C.R. 11678, 11689, ¶ 26, DA 99-1404 (July 21, 1999).

22 *Id.*

Telecommunications Industry Association on February 28, 2000, Commission Chairman William Kennard stated:

> We will head off a spectrum drought if we build on the successes of the past: expanding on the market-based approaches of the last decade; finding more ways to create a fluid market in spectrum. . . . First, we need to encourage secondary markets for underused spectrum. . . . I have directed the Commission staff to convene a forum on this issue. I want us to be ahead of the curve. *I want to have rules and policies that allow a secondary market for spectrum so that it flows as freely in the marketplace as any commodity.*[23] (Emphasis added.)

The importance of secondary spectrum markets was also discussed in the FCC's draft strategic plan, "A New FCC for the 21st Century."[24] In the plan, which Chairman Kennard presented to Congress on August 12, 1999, the FCC stated that facilitating efficient after-market spectrum trading was a "Key Policy Initiative" for spectrum management.[25] Similarly, in a Policy Statement setting forth "guiding principles for the Commission's spectrum management activities as we move into the new millennium," the FCC stated, "An active secondary market will facilitate full utilization of spectrum by the highest value end users. . . . *We also intend to pursue approaches for streamlining our license transfer procedures . . . to facilitate more efficient operation of secondary spectrum markets.*"[26] (Emphasis added.)

Prohibiting 800 MHz SMR licensees with converted channels from transferring their licenses, and hence keeping their spectrum out of secondary markets, is directly contrary to the FCC's above-stated positions. As noted above, over 95% of Southern's 800 MHz SMR licenses are converted channels, a significant amount of spectrum. From a transferability standpoint, there is no reasonable justification for ostracizing them. Doing so is needlessly inequitable to Southern, potential purchasers or lessees, and ultimately a public hoping to benefit from new spectrum-dependent technology.

C. Preserving Renewal Expectancy Benefits

Summary: All CMRS licensees are entitled to qualify for a license renewal expectancy, which is designed to benefit licensees and the public by, among other things, facilitating investment, creating stability, and allowing companies with proven track records to retain their authorizations.

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23 *"Wire Less Is More" An Address By Chairman William E. Kennard to the Cellular Telecommunications Industry Association, New Orleans, Louisiana, February 28, 2000.*

24 *Chairman Kennard Delivers to Congress Draft Strategic Plan for 21st Century, News Release* (August 12, 1999).

25 *Id.*

26 *In the Matter of Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, Policy Statement*, 14 F.C.C.R. 19868, ¶ 13; FCC 99-354 (Nov. 18, 1999).

Prohibiting 800 MHz SMR licensees with converted channels from transferring their licenses would go against established FCC policy by substantially negating those benefits.

The basis for the renewal expectancy for CMRS licensees is 47 C.F.R. 22.940, which sets forth the criteria used in determining whether a licensee qualifies for a renewal expectancy. This provision is applicable to all CMRS licensees, including SMR.[27] As expressly stated by the Commission, the benefits of a renewal expectancy include: (1) facilitating investment, (2) providing stability over the long run; (3) promoting investment in and rapid deployment of new technologies and services; and (4) better serving the public by reducing the possibility that proven operators will be replaced with less effective operators.[28]

The above-stated benefits are undeniably important. However, all of them are substantially negated for growth-oriented carriers if they lose their ability to transfer their licenses. For example, investing in existing infrastructure or developing new technologies and services is dependent on obtaining financing, which often comes in the form of initial public offerings or other investments that provide an equity stake in the company. Neither of those common financing devices can be utilized if transfers are prohibited, because bringing in new shareholders would effectuate a transfer of control. Mergers and acquisitions are also commonly undertaken by wireless providers, but they are impossible if transfers are prohibited. The same can be said for selling or swapping licenses that are no longer economically viable or otherwise important.

The Commission should not place itself in the position of implementing a new rule that directly conflicts with the policy behind an existing rule. In this case, the 800 MHz SMR transfer requirements for licensees with converted channels were comprehensively examined as recently as 1995 and there is no indication of a need to change them now. Because such a change, in the form of a prohibition, would directly conflict with the policy behind those licensees' renewal expectancies, it should not be made. Rather, the status quo, and hence all the benefits of the renewal expectancy, should be maintained.

D. Lack of Proper Notice

Summary: The FCC did not provide sufficient notice, in accordance with the Administrative Procedure Act ("APA"), of the possibility that it would use this rulemaking to change the transfer rights associated with converted 800 MHz SMR licenses. As such, it deprived

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27 *CMRS Third Report and Order*, 9 F.C.C.R. at 8156, ¶¶ 385-387.

28 *In the Matter of Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz*, ET Docket No. 95-183, P.R. Docket No. 93-253, *Report and Order and Second Notice of Proposed Rulemaking*, 12 F.C.C.R. 18600, 18626, ¶ 49, FCC 97-391 (Nov. 3, 1997).

interested parties of an opportunity to meaningfully participate in this aspect of the rulemaking.

The APA provides that in notice and comment rulemakings, interested parties must be given notice that allows "an opportunity to participate in the rule making through submission of written data, views, or arguments . . . ."[29] The D.C. Circuit has construed this provision to require that notice be sufficient to enable parties to "comment meaningfully."[30] In determining whether that has been done, the Court will examine whether the notice affords: (1) exposure to diverse public comment; (2) fairness to affected parties; and (3) an opportunity to develop evidence in the record.[31]

In this instance, the FCC did not provide notice in either the *NPRM* or the subsequent *Public Notice* of the possibility that it would use this rulemaking to change the transfer rights associated with converted 800 MHz SMR licenses. In fact, Southern did not learn of the possibility until recently, long after the comment period closed on September 30, 1999. Accordingly, it was not afforded an opportunity to comment meaningfully, which it submits would have included setting forth its position in formal comments. In applying the D.C. Circuit's three notice evaluation factors, Southern would note that the lack of notice of this matter has precluded the FCC from being exposed to diverse public comment and developing adequate evidence in the record. It certainly has not been fair to affected parties, as demonstrated by the fact that Southern (arguably the most affected party of all) was unable to advocate its position in formal comments early in the proceeding, before the FCC's deliberative stage, and has no idea exactly what the agency has under consideration on this important issue.

In accordance with the foregoing, utilizing this rulemaking to change the rules on transfers for converted 800 MHz SMR licenses, such that a prohibition on transfers is enacted, would violate the APA.

E. No Benefit To The Public Interest

Summary: No benefit would adhere to the public interest by prohibiting the transfer of converted 800 MHz SMR licenses. Rather, such a prohibition would be contrary to the Commission's spectrum management principles by freezing spectrum in place with its current licensees.

Southern cannot conceive of any benefit that would adhere to the public interest by prohibiting the transfer of converted 800 MHz SMR licenses. If the Commission has a notion of preserving or even replenishing the Private Land Mobile Radio Services, specifically the Business and I/LT pool, a prohibition on transfers certainly will not accomplish either of those goals. With regard to preserving the Business and I/LT pool, CMRS providers are currently prohibited from drawing further licenses from it under the

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29 5 U.S.C. § 553(c) (1994).

30 *Florida Power & Light Company v. USA*, 846 F.2d 765, 771 (D.C. Cir. 1988).

31 *Association of American Railroads v. Dep't of Transportation*, 38 F.3d 582, 589 (D.C. Cir. 1994).

intercategory sharing ban.[32] As for replenishing the pool, a transfer prohibition would have just the opposite effect - converted Business and I/LT licenses will be frozen in place with their current licensees. That consequence, in fact, would be contrary to the public interest by restricting normal growth oriented business practices such as obtaining and financing and participating in mergers. The inability to transfer licenses can detract from the ability to take advantage of such opportunities and, hence, can make it more difficult to expand networks and build-out systems.

An overriding principle of the Commission's spectrum management policy is to encourage the flow of licenses to their highest and best use. While certain guidelines are in place to regulate that flow, an additional guideline in the form of a transfer prohibition is not warranted. Rather, as indicated by the foregoing, a transfer prohibition would be contrary to Commission policy.

III. CONCLUSION

For all the foregoing reasons, the FCC should not prohibit the transfer of 800 MHz SMR licenses lawfully converted to commercial use from Business and I/LT channels.

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[32] *In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, *First Report and Order, Eighth Report and Order, and Second Notice of Proposed Rulemaking*, 11 F.C.C.R. 1463, 1537, ¶¶ 141-142, FCC 95-501 (Dec. 15, 1995).